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August 6, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 97-138
Comments of Dick Broadcasting Company, Inc. of Tennessee

Dear Mr. Caton:


On behalf of Dick Broadcasting Company, Inc. of Tennessee, there is transmitted herewith an original and four (4) copies of its "Comments" regarding the Commission's Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations.

Please direct any inquiries concerning this submission to the undersigned counsel.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP

By:



Allan G. Moskowitz

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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In the Matter of)
)
Review of the Commission's Rules)
Regarding the Main Studio and)
Local Public Inspection Files of)
Broadcast Television and Radio Stations)

AUG - 6 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF
DICK BROADCASTING COMPANY, INC. OF TENNESSEE

Dick Broadcasting Company, Inc. of Tennessee ("Dick"), by its attorney, hereby files its Comments with regard to the Commission's Notice of Proposed Rule Making ("NPRM"), FCC 97-182, released May 28, 1997. In support thereof, the following is respectfully shown:

1. Dick is the licensee of Radio Stations WIVK(AM)/-FM, Knoxville, Tennessee; WNOX(FM), Loudon, Tennessee; WIOL(AM), Knoxville, Tennessee; and WXVO-FM, Oliver Springs, Tennessee.
2. Dick strongly supports the Commission's liberalization of its rules regarding main studio location. It also strongly endorses the proposed modifications to the Commission's rules regarding public file location and content.

I. Main Studio Location

3. Dick supports the Commission's conclusion that the current rules governing main studio location are in dire need of revision because they are outdated and unnecessarily restrict radio and television broadcasters. In the NPRM, the Commission states that its goal in maintaining any rule governing main studio location is to guarantee and "facilitate interaction between licensees and their local communities." We believe that the current rules can be

liberalized to maintain the potential for the community of license's accessibility to the licensee and, therefore, the potential for interaction, while also eliminating unnecessary operational burdens from broadcasters and allowing them to achieve economies of scale.

4. As acknowledged by the NPRM, the current rules impose substantial burdens on multi-station licensees who could operate more efficiently from one centrally located studio and office. Additionally, the present rule favors higher class, more powerful stations over smaller, lower powered stations. For example, the radius for a Class A station's city grade contour is approximately ten miles while that of a Class C station is four times that distance. While the need for "reasonable access" to the studio may be the same, it is clear that a broadcaster's flexibility in meeting that "need" differs by the size of the station.

5. For example, WIOL(AM), WIVK(AM) and WIVK-FM, all licensed to Knoxville, Tennessee, all share a common main studio and production location. However, WNOX(FM) is licensed to Loudon, Tennessee, a small community approximately 30 miles southeast of Knoxville. Similarly, WXVO-FM is licensed to Oliver Springs, Tennessee, another small community approximately 30 miles northeast of Knoxville. In reality, both WNOX(FM) and WXVO-FM are Knoxville stations. Both are counted as part of the Knoxville market and serve the greater Knoxville area. Furthermore, both business offices and main production studios are co-located at the main studio location of WIOL(AM), WIVK(AM) and WIVK-FM. However, WNOX(FM)'s city grade contour falls six miles short of the main studio location of those stations. Similarly, the city grade contour of WXVO-FM does not reach the main studio of those three stations located in Knoxville. As a result, we have been forced to establish two extra "main studios" within the city grade contours of WNOX(FM) and WXVO-FM which are

minimally staffed and minimally equipped and whose sole purpose and existence is to comply with the Commission's present main studio rule. As far as we know, neither the WNOX(FM) nor the WXVO-FM "main studio" has any visitors and, in fact, there is no reason for anyone to venture there because their listeners consider both stations to be Knoxville stations and communicate with those stations through our Knoxville office. Consequently, the economies of scale that should result from operating five radio stations in one market are dissipated. Moreover, the two extra "main studios" are non-productive, costly and serve no purpose other than to "keep us legal."

6. In order to moderate the clear inequities inherent in the Commission's existing main studio location rules, Dick recommends that the Commission adopt a rule that extends the permitted location of a main broadcast station for AM and FM radio stations to any location within either (1) a radius of 40 miles from the city of license; or (2) anywhere within the overlapping city grade contours of the licensee's commonly-owned or controlled stations in that market.

7. These modifications would substantially liberalize the Commission's current policy and would still provide reasonable access to the station's community of license. Licensees of several stations within a market, such as Dick, which presently must maintain several "main studios" in order to comply with the Commission's rules would be able to achieve the economies of scale contemplated by the liberalization of the duopoly rules by concentrating their business and production at one studio for all of the stations. Furthermore, the Commission's historical nexus of the station's main studio to its community of license is an anachronism which today has very little meaning to a station's service area, i.e., that community

of listeners within the reach of the station's signal who actually listen and use the station.

Consequently, by allowing stations to locate within a broader geographic area the Commission would arguably be improving the accessibility of the studio to each station's listeners.

Moreover, Dick's proposal allows flexibility to multi-station owners in a given market area or to a stand alone Class A station licensed to a single community within that market.

8. We agree with the Commission that the final rule must be clearly and easily understood and applicable. Consequently, we also agree with the Commission that Apex's proposal to require the main studio to be "reasonably accessible to residents of the station's community of license" or "within 30 minutes normal driving time" is too vague. Similarly, the Commission's proposal to use a straight mileage standard alone would not always lift the burdens on licensees of multiple stations in one market. We also agree that a proposal to retain the existing rule and entertain waivers should be rejected because it would create uncertainty, impose substantial burdens on both licensees and the Commission and is unnecessary.

9. Finally, the proposal to allow a main studio to be located within the principal community contour of any station licensed to a community of license is unfair to the small communities which have only one or two Class A stations assigned to them and would deprive these stations of the flexibility which would be enjoyed by stations of equal size but assigned to communities which have more stations. Furthermore, many single station communities are actually part of a larger market, i.e., Radio Station WINX(AM), Rockville, Maryland. Consequently, we do not believe the use of the concept of city grade contours alone, whether limited to those of an individual station, those of a commonly-owned group of stations, or the

contours of every station in the community, is feasible by itself, but rather must be combined with an alternative mileage standard.

II. Location of Public Inspection File

10. Dick strongly agrees with the Commission that the preferred and most rational location for a local public inspection file is at a broadcast station's main studio location. In fact, once the Commission determines what rule should apply to the location of a main studio, it should then require the files to be maintained at that main studio. The current rule requiring that the files be placed in the community of license has not made any sense since the date that the Commission liberalized its main studio rule to its current city grade contour requirement. Requiring the public file to be at a location other than the main studio requires the licensee to put the station's public file in the hands of others, i.e., a public library, a law office, local chamber of commerce, etc., who are not by law required to ensure its completeness or integrity. Instead, licensees must maintain a constant vigil to ensure that their public file, usually kept at an inconvenient distance from the main studio or even the station's business office, is complete and accurate.

11. Furthermore, the Commission has never required, except when certain applications are filed that require a local public notice, the advertisement of the existence or location of a station's public file. Consequently, members of the public necessarily come to the station's main studio or main office if they wish to review the station's public file.

12. The main studio is obviously the most logical repository for the public file. It is the location listeners of the station will first think of if they wish to view the public file; the location is well advertised in directories and even by outdoor signage; and it is staffed by

knowledgeable broadcasting professionals who can answer questions raised by the public and who are personally responsible for maintaining the licensee's records. In fact, no location other than the main studio makes any sense as the repository for a station's public file.

13. Dick opposes the proposal of Salem Communications Corp. that the Commission require any licensee who elects to place its public file at its main studio outside its community of license to also accommodate the public by providing free transportation to the main studio, or delivering the public file to a location specified by the requestor, or providing specific documents by mail to the requestor. This, we believe, is far too burdensome to justify the perceived benefits. Salem's proposal creates a new level of regulations in disregard of a licensee's coverage. Not only is the proposal cumbersome, but it could also discourage broadcasters from locating their studio or public inspection files anywhere but within their particular communities of license. Furthermore, the present rules provide a mechanism that allows the public full access to station records. Hence, Section 73.3526(f) of the Rules covers such matters as machine reproduction upon request, and the manner and time period in which such documents must be provided. Salem does not contend that the rule is failing the public, so there is no reasonable basis for change.

III. Public Inspection File Contents

14. Dick agrees with all of the Commission's proposals with respect to public inspection file contents except with respect to the requirement that licensees no longer be responsible for maintaining the public file materials when the station's license has been assigned to a new owner.


15. While it is true that this requirement is sometimes onerous (and often impossible to comply with), in view of the quick succession of assignments of license and successive licensees that have occurred at many stations in the recent past, as a result of the relaxation of the duopoly rules, completely eliminating the responsibility of successor licensees to maintain the integrity of the files for any length of time would, we believe, encourage present licensees to fail to maintain the files in the knowledge or belief that the station's license would be assigned in the not too distant future. Consequently, to ensure that the public file has any future purpose, we believe that successor licensees should be required to be responsible for the contents of the public file for a two year period preceding the consummation of the assignment to them or alternatively back to the previously granted renewal, whichever is shorter.

16. Finally, Dick rejects the Commission's proposal that electronic mail messages ("e-mail") ought to be considered as written comments required to be maintained in a station's public inspection file. The original requirement that only "written comments and suggestions" be maintained as opposed to all varieties of comments, written or merely oral, clearly established "written" as a minimum acceptable standard that had to be met to warrant attention. The ease of duplication afforded by e-mail presents the reasonable probability that a limited number of correspondents could flood a station with "comments and suggestions" that might well be frivolous, irrelevant or harassing. At a time in which paper, pens, envelopes and stamps continue to be fully accessible to the population and computer access and use continues to be limited, it does not seem unreasonable to continue to require that a conventionally measurable standard of formal effort -- a comment committed to paper and delivered to the licensee -- be required of any

listener who wishes to make comments or suggestions that the Commission will require the licensee to maintain in the station's public inspection files.

Respectfully submitted,

DICK BROADCASTING COMPANY, INC. OF TENNESSEE

By: 
Allan G. Moskowitz

Its Attorney

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August 6, 1997

CERTIFICATE OF SERVICE

I, Diane E. Bateman, a secretary in the law firm of Kaye, Scholer, Fierman, Hays & Handler, LLP, do hereby certify that on this 6th day of August, 1997, a copy of the foregoing "Comments" was hand-delivered to the following:

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